

STATE OF COLORADO

Colorado General Assembly

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MEMORANDUM

TO: Timothy Farnum and Trevor Huster

FROM: Legislative Council Staff and Office of Legislative Legal Services

DATE: March 22, 2017

SUBJECT: Proposed initiative measure 2017-2018 #19 concerning prohibiting sales of smartphones to minors under the age of 13.

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Purposes

The major purpose of the proposed amendment appears to be to prohibit the sale of a smartphone if the intended owner of the smartphone is under the age of 13.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

General questions:

1. Article V, section 1 (8) of the Colorado constitution requires that the following enacting clause be the style for all laws adopted by the initiative: "Be it Enacted by the People of the State of Colorado". To comply with this constitutional requirement, this phrase should be added to the beginning of the proposed initiative.
2. Article V, section 1 (5.5) of the Colorado constitution requires all proposed initiatives to have a single subject. What is the single subject of the proposed initiative?
3. What will be the effective date of the proposed initiative?
4. Pursuant to article V, section 1 (2) of the Colorado constitution, proposed initiatives amend either the Colorado constitution or state law (i.e., the Colorado Revised Statutes).
 - a. Does the proposed initiative amend the Colorado constitution or the Colorado Revised Statutes?
 - b. Additionally, in accordance with section 1-40-102 (4), Colorado Revised Statutes, and for publication purposes, an amending clause should be used to show where in the Colorado constitution or Colorado Revised Statutes a proposed initiative's provisions should be inserted. Where will the proposed initiative be placed? (Please indicate through an amending clause where the proposed initiative will be placed.)
5. Article V, section 1 (5) of the Colorado constitution and section 1-40-102 (4), Colorado Revised Statutes, require a proponent to submit for review and comment the full text of the measure being proposed, which, if passed, becomes the actual language of the constitution or statute. The text of the proposed initiative appears to be a ballot title and basis for the proposal, rather than actual language that would be included in the Colorado constitution or the Colorado Revised Statutes. Please amend your proposal to include the actual text of your proposed constitutional or statutory change.

The basis for the proposal, or some of the "Whereas" clauses, may be more appropriate in a nonstatutory legislative declaration. A legislative declaration statement is an explicit or formal statement or announcement about the legislation. Often a legislative declaration statement indicates the problem the general assembly is trying to address and includes a statement that the general assembly is enacting this legislation to fix these problems.

Content-specific questions:

6. The proposed measure makes it illegal to distribute or sell a smartphone if the intended owner is under age 13.
 - a. What does the term "intended owner" mean? For instance, if a person purchases a smartphone and allows a person under 13 to use the smartphone, who is the intended owner in that situation? What if a parent or legal guardian allows the person under 13 to possess the phone?
 - b. How would a business that sells a smartphone determine who the intended owner is?
 - c. The measure uses the phrase "distribution or sale". What is the difference between "distribution" and "sale"? Does the term "distribution" apply to a wholesaler and, if so, how would a wholesaler comply with the measure?
7. The measure states that a violation would result in stiff monetary fines.
 - a. Do the proponents intend for a violation to be a crime? If so, what level of offense is the crime? Is the penalty limited to a monetary fine? What would be the amount of the monetary fine?
 - b. If it is not a crime, how do the proponents intend to enforce the prohibition and impose monetary penalties?
8. The measure requires "valid identification" to verify the age of the intended owner.
 - a. What documents satisfy the "valid identification" requirements? Is this a proof-of-age document? Is picture identification required? Does the identification have to be issued by a state or federal agency? Is a school identification card sufficient?
 - b. Would the proponents consider defining "valid identification"? There are currently definitions of "identification" and "valid identification" in statute (sections 1-1-104 (19.5)(a) and 42-5-105 (2)(b), Colorado Revised Statutes, respectively).
9. Pursuant to section 1-40-105.5, Colorado Revised Statutes, the director of research of the legislative council is required to prepare an initial fiscal impact statement, which includes an abstract that appears on petition sections, for each

initiative that is submitted to the Title Board. In preparing the statement, the director is required to consider any fiscal impact estimate prepared by the proponents.

- a. Will you submit the initiative to the Title Board? If so, when do you intend to do so?
- b. Are you submitting a fiscal impact estimate today? If not, do you plan to submit an estimate in the future, and if so, when do you intend to do so?
- c. To ensure that there is time for consideration, you are strongly encouraged to submit your estimate, if any, at least 12 days before the measure is scheduled for a Title Board hearing. The estimate should be submitted to the legislative council staff at BallotImpactEstimates.ga@state.co.us.

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. Each statutory or constitutional section being amended, repealed, or added is preceded by a separate amending clause explaining how the law is being changed. For example, if you intend to add a new article to title 27 of the Colorado Revised Statutes, you would include the following amending clause: "In Colorado Revised Statutes, **add** article __ to title 27 as follows:".
2. Before the amending clause, number each section, part, etc. that is being amended or added with a section number (e.g., **SECTION 1.**, **SECTION 2.**).

For example:

SECTION 1. In Colorado Revised Statutes, **add** article __ to title 21 as follows:

3. Each section in the Colorado Revised Statutes and the Colorado constitution has a headnote. Headnotes briefly describe the content of the section. A headnote should be added to the proposed initiative and be in bold-face type.

4. The Colorado Revised Statutes are divided into sections, and each section may contain subsections, paragraphs, subparagraphs, and sub-subparagraphs as follows:

X-X-XXXX. Headnote. (1) Subsection.

(a) Paragraph

(I) Subparagraph

(A) Sub-subparagraph

(B) Sub-subparagraph

(II) Subparagraph

(b) Paragraph

(2) Subsection

(3) Subsection

5. It is standard drafting practice when referencing statutory sections to include the word "section" before the number. For example, "section 24-35-204.5."
6. It is standard drafting practice to use SMALL CAPITAL LETTERS [rather than ALL CAPS] to show the language being added to statute and stricken type to show language being removed from the Colorado constitution or the Colorado Revised Statutes.
7. For purposes of this initiative, the word "shall" is defined in section 2-4-401 (13.7), Colorado Revised Statutes, and it means "that a person has a duty." The related word "must," which is defined in section 2-4-401 (6.5), Colorado Revised Statutes, "means that a person or thing is required to meet a condition for a consequence to apply." Furthermore, "'must' does not mean that a person has a duty."
8. Although the text of the proposed initiative should be in small capital letters, use an uppercase letter to indicate capitalization where appropriate.
9. The term "intended owner" should have an article before it.
10. The following is the standard drafting language for creating a definition:

"As used in this [section][subsection][paragraph], unless the context otherwise requires, 'smartphone' means any hand-held device with internet connectivity,

data connectivity, or wifi connectivity. 'Smartphone' does not include cellular phones with voice, text, or GPS capabilities."